

## **PANEL ATTORNEY MEMORANDUM OF AGREEMENT**

This contract is entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Missouri State Public Defender (hereinafter referred to as MSPD) and \_\_\_\_\_, Bar #\_\_\_\_\_, a duly licensed Missouri lawyer in good standing (hereinafter referred to as Panel Attorney):

### **I. ACKNOWLEDGEMENT**

- a) The State of Missouri has a constitutionally mandated responsibility to provide public defender services to indigent individuals accused of crimes where jail time or imprisonment is a possibility.
- b) A portion of that caseload cannot be handled in-house by public defender offices due to conflicts of interest and/or case overload, and must be contracted out to private attorneys, hereinafter referred to as Panel Attorneys.
- c) The Panel Attorney agrees to provide, and MSPD agrees to pay for competent and zealous representation to those to be serviced by this contract as required by all controlling Rules of Professional Responsibility.
- d) MSPD and the Panel Attorney agree that any and all funds paid pursuant to the contract are provided for the sole purpose of provision of legal services to eligible clients.
- e) The Panel Attorney shall provide all necessary information for payment by the State of Missouri, including where required by law an agreement by the Panel Attorney to participate in, or an affirmation that he/she or the firm already participates in, a federal work authorization program such as EVerify.

### **II. DEFINITIONS**

- a) A "client" is a person whom MSPD or the court of appropriate jurisdiction has determined to be eligible for and entitled to court appointed counsel as provided under the requirements of Chapter 600 RSMo or 18 CSR 10-4.010. Upon determination of indigence and the assignment of the case to the Panel Attorney, the Panel Attorney shall enter his/her appearance with the court within five working days or the next scheduled court date whichever comes first.
- b) A "case" is any action relative to a criminal charge, prosecution, or appeal in which MSPD through its employees or by way of this contract is obligated to provide defense services.
- c) "Disposition" in criminal cases shall mean: 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) an order or result requiring a new trial, 4) suspended imposition of sentence, suspended execution of sentence or execution of sentence, 5) final sentencing and the filing of the Notice of Appeal when appeal is warranted or desired by the client, 6) an opinion or summary order issued by an appellate court, or 7) a finding by MSPD that the client is no longer eligible for public defender services.
- d) "Panel Attorney" means a private attorney licensed in good standing to practice law in Missouri and who has been approved for private contract cases by MSPD.
- e) "Panel Attorney Rotation List" is a list of Panel Attorneys approved by MSPD to be assigned cases within a specific judicial circuit in Missouri.

### III. WORK TO BE PERFORMED BY PANEL ATTORNEY

a) The services described above shall be provided in the following judicial circuits:

b) The Panel Attorney agrees to be placed on a designated Panel Attorney Rotation List and to accept all appointments to cases assigned to him/her from that rotation list unless relieved of that rotational assignment by MSPD. The Panel Attorney may apply for more than one judicial circuit and if accepted will be assigned cases from all such circuits as the rotation demands.

c) The Panel Attorney agrees to submit all billing invoices for case assignments and litigation expenses as approved by MSPD in compliance with MSPD policies and procedures.

d) If a particular case to which the Panel Attorney is required to provide representation appears to demand an extraordinary amount of time and preparation or the number of cases in a venue results in an unforeseen increase in caseload or legal responsibilities, the Panel Attorney may apply to MSPD for extraordinary compensation or reassignment of the case. It is agreed that the Panel Attorney will maintain reasonable average annual caseloads, including contracts with MSPD.

e) MSPD's *Guidelines for Representation*, effective November 1, 1992, are hereby incorporated into this agreement and substantial compliance and adherence to those *Guidelines* are to be performed by the Panel Attorney. The Panel Attorney shall document compliance with those *Guidelines* and shall make available for inspection by MSPD or the State Auditor records necessary to conduct performance audits at times agreed upon by the parties. Failure to maintain such records or to make such records available for inspection is a material breach of this agreement.

f) The Panel Attorney shall not provide representation in a private capacity to individuals in cases initially referred for assignment as public defender clients without filing a written request for an exception to this provision with MSPD.

g) The Panel Attorney shall not subcontract or delegate any of the services required under this contract without obtaining prior written consent from MSPD.

h) The Panel Attorney must give notice to MSPD Case Contracting in all cases in which representation was provided stating the resolution of the case, the terms of disposition and verify that a lien was filed at the conclusion of the case and submit all invoices as directed by MSPD.

### IV. CONTRACT PRICE & PAYMENT INFORMATION

a) The Panel Attorney shall be paid by MSPD according to the fee schedule adopted by MSPD and incorporated herein. Fees will be paid in the amount reflected in the fee schedule for the case type so identified in the fee schedule attached and identified as Appendix A. Additional reporting information may be required by MSPD prior to payment.

b) The Panel Attorney requests to be paid as indicated below. The Panel Attorney understands that payments are processed through the State of Missouri Office of Administration, Division of Accounting and that payments will be remitted to a vendor as established by the Office of Administration. The Panel Attorney further understands that a State of Missouri Vendor record is created and/or updated with the Office of Administration Vendor Input Form found at: [http://oa.mo.gov/sites/default/files/vendor\\_input\\_ach\\_eftd.pdf](http://oa.mo.gov/sites/default/files/vendor_input_ach_eftd.pdf)

The Panel Attorney requests his/her MSPD payments for legal services rendered be directed to:

#### **COMPLETE ONE LINE ONLY**

Individual (provide name and SS#)

---

**OR**

Firm (provide name and Federal Employer Identification Number (FEIN))

c) Panel Attorneys who direct MSPD payments to a firm understand the following:

- 1) The Panel Attorney must give notice to MSPD in the event the Panel Attorney leaves the firm and the Panel Attorney would be required to complete a new Panel Attorney Memorandum of Agreement at that time.
- 2) In the event the Panel Attorney leaves the firm and has open MSPD cases at that time, the Panel Attorney is expected to represent MSPD clients to the completion of all previously assigned cases.
- 3) If the Panel Attorney is unable to continue representation of MSPD clients, the firm may be required to return unearned portions of funds paid unless otherwise approved by MSPD.
- 4) The Panel Attorney's firm must complete a Vendor Application Form prior to payment being made to the firm.

#### **V. ATTORNEYS & STAFF**

a) The Panel Attorney shall employ all lawyers, investigators, legal interns and secretaries necessary to provide effective representation and shall pay all routine expenses involved in providing such representation. Where extraordinary expenses are necessary to provide effective assistance of counsel, the Panel Attorney may submit a request for extraordinary expenditure approval to MSPD.

#### **VI. APPOINTMENT INDEMNIFICATION**

a) To recognize that in the performance of duties while providing representation to public defender clients under this contract, the Panel Attorney is appointed as a special public defender.

b) The Panel Attorney shall defend, indemnify and hold harmless MSPD and the State of Missouri from any and all claims, lawsuits or other allegations of liability resulting from the performance of the Panel Attorney of the work described herein which is not covered under the STATE LEGAL EXPENSE FUND, Section 105.711 RSMo.

#### **VII. RELATIONSHIP BETWEEN PANEL ATTORNEYS AND MSPD**

a) The Panel Attorney is for all purposes arising out of this contract an independent contractor and the Panel Attorney, its agents and employees, shall not be deemed or considered employees of MSPD or the State of Missouri. The Panel Attorney shall complete the requirements of this contract according to the Panel Attorney's own means and methods of work, which shall be in the exclusive charge and control of the Panel Attorney except as specified herein.

#### **VIII. NON-DISCRIMINATION**

a) The Panel Attorney shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, citizenship, sex, age, religious affiliation, ancestry, sexual orientation, veteran or handicap status.

#### **IX. ASSIGNABILITY**

a) This contract is for professional services and as such may not be assigned or delegated in total or in part without the written consent of MSPD.

## X. TERM OF AGREEMENT

a) MSPD shall have the right to terminate this contract without notice if the Panel Attorney is convicted of any crime or if disciplinary action by the Supreme Court with respect to any ethical violation becomes final. Monies paid and not earned by the Panel Attorney may be requested to be returned to the State of Missouri.

b) MSPD shall have the right to terminate this contract upon 15 days written notice to the Panel Attorney if, in the opinion of MSPD, the Panel Attorney has failed to provide effective assistance of counsel in any public defender case. Monies paid and not earned by the Panel Attorney may be requested to be returned to the State of Missouri.

\_\_\_\_\_  
Panel Attorney

\_\_\_\_\_  
Joel R. Elmer, MSPD Deputy Director

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### Appendix A

Description	Contract Guideline
Murder 1st Degree	\$10,000
Sexual Predator Trial	\$8,000
Other Homicide	\$6,000
AB Felony Drug	\$750
AB Felony Other	\$1,500
AB Felony Sex	\$2,000
CD Felony Drug	\$750
CD Felony Other	\$750
CD Felony Sex	\$1,500
Misdemeanor	\$375
Juvenile - Non Violent	\$500
Juvenile - Violent	\$750
Probation Violation	\$375
PCR Rule 24.035 Motion	\$500
PCR Rule 24.035 Evidentiary Hearing	\$250
PCR Rule 24.035 Appeal	\$500
PCR Rule 29.15 Motion	\$1,000
PCR Rule 29.15 Evidentiary Hearing	\$500
PCR Rule 29.15 Appeal	\$1,875
Direct Appeal	\$3,750

Note: When multiple cases are assigned for the same client, the full contract guideline amount is paid for the first case and the multi-case discounted rate of half the contract guideline amount is paid for subsequent cases.

MSPD will pay additional compensation in cases resolved by trial: Jury Trial - \$1,500 for the first day and \$750 for each additional day, partial days prorated. Bench Trial - \$750/day prorated.

If the attorney doing the direct appeal also did the trial, then MSPD will pay \$1,875 for the direct appeal or half the guideline amount.